

**TENNESSEE GENERAL ASSEMBLY  
FISCAL REVIEW COMMITTEE**



**FISCAL NOTE**

**HB 496 - SB 1368**

March 30, 2017

**SUMMARY OF BILL:** Prohibits a municipal, county, or regional planning commission or local legislative body from requiring certain property owners to transfer ownership of land to the local government as a condition of approving any proposed subdivision of private property without first purchasing the property at a fair market value.

Defines “regulatory taking” as the following effect when caused by city, county, or state regulations: deprivation of all economically beneficial use of the land; permanent physical invasion of the land; or diminishment of property values, including but not limited to, interference with distinct investment-backed expectations.

Authorizes an owner to sue for damages under the laws governing eminent domain for violations and requires the awarding of reasonable attorney, appraisal, and engineering fees to the property owner under certain circumstances.

**ESTIMATED FISCAL IMPACT:**

**Increase State Expenditures – Exceeds \$700,000/Highway Fund**

**Increase Local Expenditures – Exceeds \$7,000/Permissive**

**Assumptions:**

- Codifying the definition of a “regulatory taking” will lead to an increase in petitions and lawsuits filed against the state or local governments that have used the provisions of eminent domain to acquire land which resulted in a deprivation of all economically beneficial use of the land, permanent physical invasion of the land, or diminishment of property values, including, but not limited to, interference with distinct investment-backed expectations.
- According to the Tennessee Department of Transportation (TDOT), the risk of additional liability, including both more litigation and the greater likelihood of liability for property damage awards, attorney fees, and other litigation cost, arises from the broad definition of “regulatory taking” as prescribed by this proposed language.
- While it is unknown how many new cases will be brought, the number of such cases where the property owner will prevail in the suit, and the precise amount of damages which could be awarded in each case, it is reasonably estimated there will be at least 100

new cases brought against TDOT, which the property owner will prevail, with an average damage award exceeding \$7,000 each.

- The proposed language is estimated to result in a recurring increase in state expenditures exceeding \$700,000 (100 new cases x \$7,000 each), which will be paid from the Highway Fund within TDOT.
- The practice of eminent domain is considered a permissive action; any costs for damages associated with the practice of eminent domain are considered a mandatory cost on a permissive action.
- Due to multiple unknown factors, such as how many municipalities will be sued for damages as a result of the broadened definition of “regulatory taking”, the number of property owners who will prevail against the municipality, and the extent of any damages awarded to property owners, a precise increase to local expenditures cannot be determined, but it reasonably estimated that at least one suit will be brought against a municipality each year, of which the plaintiff will prevail. The permissive recurring increase in local expenditures is estimated to exceed \$7,000.

## **CERTIFICATION:**

The information contained herein is true and correct to the best of my knowledge.

A handwritten signature in blue ink that reads "Krista M. Lee".

Krista M. Lee, Executive Director

/jrh